



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BY FIRST CLASS MAIL

APR 30 2013

Maria J. Armstrong, Esq.
Bricker & Eckler, LLP
100 South Third Street
Columbus, OH 43215

RE: MUR 6590
Ohio Republican Party

Dear Ms. Armstrong:

On June 14, 2012, the Federal Election Commission notified your client, the Ohio Republican Party, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your client, the Commission, on April 23, 2013, voted to dismiss this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009).

If you have any questions, please contact Michael Columbo, the attorney assigned to this matter, at (202) 694-1341.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark D. Shonkwiler".

Mark D. Shonkwiler
Assistant General Counsel

Enclosure:
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Columbus Metropolitan Club MUR: 6590
Ohio Democratic Party
Ohio Republican Party

I. GENERATION OF MATTER

This matter was generated by a complaint filed by Mark R. Brown. See 2 U.S.C. § 437(g)(a)(1).

II. FACTS

The Columbus Metropolitan Club ("CMC") is a 501(c)(3) non-profit corporation¹ that organizes 60 to 70 public issue discussion forums in Columbus, Ohio each year.² Its stated mission "is to promote the open exchange of information and ideas among the residents of Central Ohio by providing a forum for the discussion of topics of civic and public interest."³ CMC's Articles provide that "the corporation shall not participate in, [sic] or intervene in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office."⁴

The Ohio Republican Party ("ORP") and the Ohio Democratic Party ("ODP") are registered with the Commission as state party committees. On May 23, 2012, the CMC hosted a moderated discussion entitled "Presidential Politics in O-H-I-O" (the "Forum"), featuring Robert

¹ See *Certificate of Amendment to Articles of Columbus Metropolitan Club, Inc.*, Art. 6 (Dec. 10, 1976), available at http://www2.sos.state.oh.us/reports/rwservice?imgc&Din=E222_1147 ("Certificate of Amendment").

² See *Mission*, COLUMBUS METRO. CLUB, <http://www.columbusmetroclub.org/Default.aspx?pageId=49310> (last visited Dec. 4, 2012).

³ *Id.*

⁴ CMC Certificate of Amendment, Art. 6. The Commission has analyzed CMC and its events in two past matters. See MUR 5642 (Soros, *et al.*) (book tour); MUR 6111 (Columbus Metro. Club) (candidate debate).

1 T. Bennett and Chris Redfern, the chairs of the ORP and ODP, respectively.⁵ In publicizing the
2 Forum, CMC stated that Bennett and Redfern “would address ‘[t]he economy, taxes, health care,
3 education, social rights, and individual freedoms,’” as well as questions relating to the
4 importance of Ohio to the national election scene, how the state party organizations work with
5 national election committees, where political operatives would focus their efforts, and how the
6 influx of money from Super PACs might affect the 2012 election.⁶ CMC further stated: “It all
7 comes down to choosing an R or a D and who better to discuss the process than State Political
8 Party Chairmen Chris Redfern and Bob Bennett.”⁷ The general public was invited to purchase a
9 ticket to attend the Forum.⁸ According to the CMC, 139 people attended the Forum, generating
10 revenue from ticket sales of \$2,740, which funded the costs of the event—including CMC’s
11 payment of \$2,080 for the venue and for the costs to video record the event.⁹

12 The Complaint alleges that the statements that Bennett and Redfern made at the event,
13 either praising their own party’s candidate or criticizing the opposing party’s candidate,
14 constituted express advocacy and were “campaign-related speech” that was sponsored,
15

⁵ See Compl. at 1.

⁶ See *id.* at 3-4 (quoting the CMC website announcement of the event, a copy of which was included with the Complaint as Attachment B) and 6-7 (quoting CMC’s YouTube description of the event, a copy of which was included as Attachment F). The video that CMC posted of the Forum shows that the moderator did not ask, and the speakers did not address, these latter questions. See *Presidential Politics in O-H-I-O*, COLUMBUS METRO. CLUB (May 23, 2012) (videotape of the event), available at <http://www.youtube.com/watch?v=IqYbnd3wWIM>

⁷ See Compl. at 4 (quoting Attachment B).

⁸ See *id.* at 1.

⁹ CMC Resp. at 10-11.

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1 authorized, organized, or otherwise allowed by CMC.¹⁰ The Complaint focused on four
2 statements that Bennett reportedly made at the event:

- 3 • "I think President Obama is bringing the (Ohio Republican) party together."
- 4
- 5 • The "Obama-directed bailout of General Motors and Chrysler was 'a bad thing.'"
- 6
- 7 • He "would 'be very surprised if we have a gender gap,' with more women voting for
8 Obama than Romney."
- 9
- 10 • When asked whether he was pleased with Romney as the Republican nominee, he
11 responded, "Absolutely" and further stated: "I think . . . he will appeal to not only the
12 social conservatives and the fiscal conservatives and the Tea Party people within the
13 party, but he'll be able to reach out and attract a number of independents."¹¹

14 And the Complaint highlighted two statements reportedly made by Redfern:

- 15 • He was "happy with Barack Obama as a president and a candidate."
- 16
- 17 • "The president's leadership and the leadership of those who joined him in the Congress
18 have meant that more Ohioans are working today than there were in January 2009 when
19 his hand came off the Bible. There are more Ohioans today covered by health care when
20 [*sic*] there were when the president's hand came off the Bible. And I think we should all
21 celebrate that."¹²

22 The Complaint contends that the Forum and video, which CMC subsequently provided to a
23 television news station and posted on YouTube, constituted things of value that CMC
24 contributed to the ORP and ODP, as well as their presumptive presidential candidates, which the
25 ORP and ODP knowingly accepted.¹³

26 According to CMC, the Federal Election Campaign Act of 1971, as amended, (the "Act")
27 and Commission regulations "allow both non-profit and for-profit corporations to engage in

¹⁰ Compl. at 10-11.

¹¹ *Id.* at 4-5.

¹² *Id.* at 5.

¹³ *Id.* at 2.

1 certain types of political speech in cooperation with party officials[.]”¹⁴ CMC contends that its
2 activities in connection with staging the Forum do not constitute a “contribution” or an
3 “expenditure” because CMC invited Bennett and Redfern to provide context and analysis of the
4 2012 presidential electoral landscape; its promotional materials for the event did not name or
5 contain the images of either presidential candidate or expressly advocate their election or defeat;
6 it advertised the forum as “a glimpse [of] what to expect in Ohio this upcoming presidential
7 election season”; it did not endorse a candidate or provide a platform for party officials to
8 expressly advocate the election of their parties’ candidates; it did not endorse the speakers’
9 views; it funded the event through ticket sales; and neither ORP nor ODP officials engaged in
10 express advocacy as defined by 11 C.F.R. § 100.22.¹⁵ Finally, CMC asserts that it did not violate
11 the Act or Commission regulations by providing video of the event to the Ohio News Network
12 (“ONN”) because ONN’s broadcasts are covered by the press exemption.¹⁶

13 ODP and ORP both deny that they received in-kind contributions by virtue of their
14 chairs’ participation in the Forum, and deny legal responsibility for any possible violation by
15 CMC. ORP contends that the CMC event satisfied the exemption to the definition of
16 contribution at 11 C.F.R. § 114.4(c)(7)(ii) for events sponsored by non-profit educational
17 institutions.¹⁷ ORP also asserts that “[p]roviding a forum for any person to make a statement
18 about a federal candidate does not constitute a ‘contribution’ to the speaker.”¹⁸ The ODP
19 acknowledges that the Forum was not an exempt candidate debate, but contends that the CMC

¹⁴ CMC Resp. at 7.

¹⁵ *Id.* at 9-12.

¹⁶ *Id.* at 12-16.

¹⁷ ORP Resp. at 3-4.

¹⁸ *Id.* at 4.

1 event satisfied the exemption to the definition of expenditure at 2 U.S.C. § 431(9)(B)(ii) for
2 educational activity designed to encourage individuals to vote or register to vote.¹⁹ ODP also
3 asserts that its chair, Redfern, simply “provided his personal views in response to questions” and
4 did not solicit or accept contributions.²⁰

5 III. ANALYSIS

6 The Act prohibits a corporation, including a non-profit corporation, from making a
7 contribution to a political party.²¹ A contribution includes “anything of value made by any
8 person for the purpose of influencing any election for Federal office.”²² “[T]he term anything of
9 value includes all in-kind contributions. Unless specifically exempted . . . the provision of any
10 goods or services without charge or at a charge that is less than the usual and normal charge for
11 such goods and services is a contribution.”²³ This includes the provision of facilities and
12 advertising services.²⁴

13 The Commission exercised its prosecutorial discretion to dismiss the allegations due to
14 the *de minimis* amount at issue. The record indicates that CMC paid only \$2,740 to fund the
15 costs of the Forum, which included the amount CMC spent to produce the video of the event.²⁵
16 The amount of any contribution would have to be apportioned between ODP and ORP.²⁶

¹⁹ ODP Resp. at 1.

²⁰ *Id.* at 1-3.

²¹ 2 U.S.C. § 441b(a); (b)(2).

²² 2 U.S.C. § 431(8)(A)(i); 11 C.F.R. § 100.52(a).

²³ 11 C.F.R. § 100.52(d)(1).

²⁴ *Id.*

²⁵ CMC Resp. at 10-11.

²⁶ In MUR 6459 (Iowa Faith & Freedom Coal.), the Commission dismissed an allegation that a non-profit corporation made prohibited corporate contributions to five potential candidates who were “testing the waters” by

- 1 Therefore, the Commission exercised its prosecutorial discretion and dismissed the allegation
- 2 that CMC made, and the ORP and ODP received, prohibited corporate contributions. See
- 3 *Heckler v. Chaney*.²⁷

sponsoring a public event at which those potential candidates made speeches. The Commission reasoned that "[t]o determine the amount of any contribution . . . to each of the five speakers, [the host's] costs for staging the . . . event would have to be apportioned among each of these speakers" and thus, that "[t]he prorated amount for each speaker was likely small." Statement of Reasons, Comm'rs Hunter, Weintraub, McGahn, Bauerly, Petersen, and Walther at 3, MUR 6459 (Iowa Faith & Freedom Coal.).

²⁷ 470 U.S. 821 (1985).

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